113-27

TRANSCRIPT OF RECORD.

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1884.

No. 871.

FRANCIS BARBIER, PLAINTIFF IN ERROR,

vs.

PATRICK CONNOLLY.

IN ERROR TO THE SUPERIOR COURT OF THE CITY AND COUNTY OF SAN FRANCISCO, STATE OF CALIFORNIA.

FILED JUNE 24, 1884.

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JUDD & DETWEILER, PRINTERS, WASHINGTON.

1 UNITED STATES OF AMERICA, *ss*:

The President of the United States of America to the judges of the supreme court of the city and county of San Francisco, State of California, Greeting:

Because in the record and proceedings, and also in the rendition of the judgment of a plea which is in the said supreme court before you between Francis Barbier, petitioner, pl'ff in error, and Patrick Connelly, respondent and defendant in error, a manifest error hath happened to the great damage of said petitioner and plaintiff in error, as by his complaint appears, and it being fit that the error, if any there hath been, should be duly corrected and full and speedy justice done to the parties aforesaid in this behalf, you are hereby commanded, if judgment be therein given, that then, under your seal, distinctly and openly, you send the record and proceedings aforesaid, with all things concerning the same, to the Supreme Court of the United States, together with this wit, so that you have the same at the city of Washington, in the District of Columbia, on the second Monday of October next, in the said United States Supreme Court, to be there and then held, that the record and proceedings aforesaid be inspected, the said United States Supreme Court may cause further to be done therein to correct that error what of right and according to the law and custom of the United States should be done.

Witness the Hon. Morrison R. Waite, Chief Justice of the Supreme Court of the United States, this 7th day of May, in the year of our Lord one thousand eight hundred and eighty-four, and of the Independence of the United States the one hundred and eighth.

[SEAL.] L. S. B. SAWYER,
Clerk of U. S. Circuit Court 9th Circuit Dist. of Cal.

The above writ of error is hereby allowed.

JOHN HUNT,
Presiding Judge of the Superior Court of the City & County of San Francisco, State of California.

2 The answer of the Judges of the Superior Court of the City and County of San Francisco.

The record and all proceedings of the plaint, whereof mention is within made, with all things touching the same, contained in a certain schedule to this writ annexed, we certify under the seal of our said court to the Supeeme Court of the United States within mentioned, at the day and place within, as within we are commanded.

WILLIAM T. SESNON, *Clerk.*
By D. E. VAN NOSTRAND,
Deputy Clerk.

(Endorsed:) United States Supreme Court. Frances Barbier, pl'ff in error, *vs.* P. Connelly, def't in error. Writ of error. Filed May 13th, 1884. William T. Sesmon, clerk, by D. N. Van Nostrand, deputy clerk.

3 UNITED STATES OF AMERICA, *ss:*

To P. Connolly, Greeting:

You are hereby cited and admonished to be and appear at a Supreme Court of the United States, to be held at the city of Washington, in the District of Columbia, on the second Monday of October, A. D. 1884, pursuant to a writ of error filed in the clerk's office of the superior court of the city and county of San Francisco, State of California, wherein Francis Barbier is plaintiff in error and you are defendant in error, to show cause, if any there be, why the judgment in the said writ of error mentioned should not be corrected, and speedy justice should not be done to the parties in that behalf.

Witness the Honorable John Hunt, presiding judge of the superior court of the city and county of San Francisco, State of California, this 8th day of May, A. D. 1884, and of the independence of the United States the 108th.

[SEAL.] JOHN HUNT,
Presiding Judge of the Superior Court of the City and County of San Francisco, State of California.

4 Service upon me of the within citation, this 9th day of May, A. D. 1884, at the city and county of San Francisco, is hereby admitted.

PATRICK CONNOLLY,
Sheriff of the City and County of San Francisco, the Defendant in Error.
J. D. SULLIVAN,
District Attorney, City & County of San Francisco.
ALFRED CLARKE,
Counsel for Patrick Connolly, and Counsel for the City and County of San Francisco.

(Endorsed:) United States Supreme Court. Francis Barbier, pl'ff in error, *vs.* P. Connolly, deft in error. Citation. Filed May 13th, 1884. William T. Sesnon, clerk, by D. C. Van Nostrand, deputy clerk.

5 *Petition for Writ.*

In the Superior Court of the City and County of San Francisco, State of California.

In the matter of the application of Francis Barbier for a writ of *habeas corpus.*

To the Hon. T. K. Wilson, judge of the superior court of the city and county of San Francisco, State of California:

The petition of Francis Barbier respectfully shows: That he is unlawfully imprisoned, detained, confined, and restrained of his liberty by P. Connolly, sheriff of the city and county of San Francisco, at the old city hall, in the city and county of San Francisco, in the State of California.

That the said imprisonment, detention, confinement, and restraint are illegal, and that the illegality thereof consists in this, to wit, that said Connolly holds petitioner without any written authority for his detention.

Wherefore your petitioner prays that a writ of *habeas corpus* may be granted, directed to the said Sheriff Connolly, commanding him to have the body of petitioner before your honor at a time and place therein to be specified, to do and receive what shall then and there be considered by your honor concerning him, together with the time and cause of his detention and said writ, and that he may be restored to his liberty.

FRANCIS BARBIER.

Dated May 2d, 1884.

6 STATE OF CALIFORNIA, }
City and County of San Francisco, } *ss.*:

Francis Barbier being duly sworn, says: That he is the petitioner named in the foregoing petition; that he has read the said petition and knows the contents thereof, and that the same is true of his own knowledge, except as to the matters which are therein stated on his information or belief, and, as to those matters, that he believes it to be true.

FRANCIS BARBIER.

Subscribed and sworn to before me, this 2d day of May, 1884.

D. C. VAN NOSTRAND,
Dep. County Clerk.

Let the writ issue as prayed for.

T. K. WILSON, *Judge.*

[Endorsed:] Dep't No. 1. No. 2427. Superior court, city and county of San Francisco. In the matter of the application of Francis Barbier for a writ of *habeas corpus*. Petition for writ. Filed May 2d, 1884. William T. Sesnon, clerk, by D. C. Van Nostrand, deputy clerk. William E. Hall, attorney for petitioner.

7 In the Supreme Court of the City and County of San Francisco, State of California.

The people of the State of California to P. Connolly, Greeting:

We command you, that you have the body of Francis Barbier, by you imprisoned and retained, as it is said, together with the time and cause of such imprisonment and detention, by whatsoever name said Francis Barbier shall be called or charged, before T. K. Wilson, judge of the superior court in and for the city and county of San Francisco, State of California, at the court room of said court and in the city and county of San Francisco, on the 5th day of May, 1884, at 10 o'clock in the noon of that day, to do and receive what shall then and there be considered concerning the said Francis Barbier. And have you then and there this writ.

Witness Hon. T. K. Wilson, judge of the said superior court, at the

court room thereof, in the city and county of San Francisco, this 2d day of May, 1884.

Attest my hand and the seal of said court, the day and year last above written.

[SEAL.] WILLIAM T. SESNON, *Clerk.*
By D. C. VAN NOSTRAND,
Deputy Clerk.

Service admitted May 2d, 1884.

J. D. SULLIVAN, *Dist. Att'y.*
PATRICK CONNELLY, *Sheriff.*

8 [Endorsed:] 2427. Dept. 1. Superior court, city and county of San Francisco. In the matter of the application of Francis Barbier for a writ of *habeas corpus.* Writ of *habeas corpus.* Filed May 5th, 1884. William T. Sesnon, clerk, by D. C. Van Nostrand, deputy clerk. Wm. E. Hall, attorney for petitioner.

9 STATE OF CALIFORNIA, } ss:
City and County of San Francisco, }

To the honorable the superior court:

Now comes P. Connolly, and makes this his return to the within writ, and shows that he is sheriff of the city and county of San Francisco.

That Francis Barbier is charged by a certain complaint, a copy of which is hereto annexed and marked Exhibit B, and made a part of this return, with having violated order 1767 of the board of supervisors of said city and county, a copy of which is hereto annexed and marked Exhibit A and made a part of this return. And said order being then and there in force, the said Francis Barbier was committed by the police judge's court to the custody of respondent for a violation of said order under a certain commitment, a copy of which is hereto annexed and marked Exhibit C and made a part hereof.

Respectfully submitted.

PATRICK CONNOLLY, *Sheriff.*

10 EXHIBIT A.

Order No. 1767, regulating the establishment and maintenance of public laundries and public wash-houses within certain limits in the city and county of San Francisco.

[Preamble.]

Whereas the indiscriminate establishment of public laundries and public wash-houses, where clothes and other articles are cleansed for hire, is injurious and dangerous to public health and public safety, and prejudicial to the well-being and comfort of the community, and depreciates the value of property in those neighborhoods where such public laundries and such public wash-houses are situate.

Under and in conformity to the authority vested by section 11 of

article XI of the constitution of the State of California, and of subdivision 9 of section 74 of an act entitled "An act to repeal the several charters of the city of San Francisco, to establish the boundaries of the city and county of San Francisco, and to consolidate the government thereof," approved April 19, 1856, and the several acts amendatory thereto and supplementary thereof.

The people of the city and county of San Francisco do ordain as follows:

[Limits defined.]

SECTION 1. On and after the passage of this order, it shall be unlawful for any person or persons to establish, maintain, or carry on the business of a public laundry or a public wash-house, where clothes or other articles are cleansed for hire, within that portion of the city and county of San Francisco lying and being within the following boundaries: Commencing at the intersection of Devisadero street with the waters of the bay of San Francisco; thence following the bay shore easterly and southerly to the easterly end of Channel street; thence along Channel street in a westerly direction to Potrero avenue; thence southerly along Potrero avenue to Army street; thence westerly along Army street to Dolores street; thence northerly along Dolores street to and across Market street to Ridley street; thence westerly along Ridley street to Devisadero street, and thence northerly along Devisadero street to the bay and point of commencement, without having first complied with the conditions hereinafter specified.

[Persons conducting laundries must obtain certificates from health officer and fire wardens as to condition of premises.]

SEC. 2. It shall be unlawful for any person or persons to conduct or maintain a public laundry or wash-house within the district named in section 1 of this order without having first obtained a certificate, signed by the health officer of the city and county of San Francisco, that the premises are properly and sufficiently drained, and that all proper arrangements for carrying on the business without injury to the sanitary condition of the neighborhood have been complied with, and particularly that the provisions of section 4 of Order No. 1587 of this board have been complied with; also a certificate, signed by the board of fire wardens of the city and county of San Francisco, that the stoves, washing and drying apparatus, and the appliances for heating smoothing-irons are in good condition, and that their use is not dangerous to the surrounding property from fire, and that all proper precautions have been taken to comply with the provisions of Order No. 1752, "to define the fire limits of the city and county of San Francisco, and making regulations concerning the erection and use of buildings in said city and county."

[Certificate of health officer and board of fire wardens in regard to laundries, etc., no charge to be made therefor.]

SEC. 3. It shall be the duty of the health officer, also of the board

of fire wardens, respectively, upon application from any person or persons proposing to open or conduct the business of a public laundry within that portion of this city and county designated and described in section 1 of this order, to inspect the premises in which it is proposed to carry on said business, or in which said business is being carried on, with a view to ascertaining whether the said premises are provided with proper drainage and sanitary appliances, also whether the provision of Order No. 1752 of this board has been complied with, and if found in all respects satisfactory, then to issue to said applicants the certificates provided for in section 2 of this order.

No charge whatever shall be made, or compensation or fee collected or received, for the performance of any of the services required by the provisions of this order, in the inspection of premises or the issuance of a certificate, but all such services shall be performed free of charge.

[Time at which laundry work may not be performed]:

SEC. 4. No person or persons owning or employed in the public laundries or public wash-houses provided for in section 1 of this order shall wash or iron clothes between the hours of 10 o'clock p. m. and 6 o'clock a. m., nor upon any portion of that day known as Sunday.

[No person suffering from infectious disease to be permitted to sleep, lodge, or remain in any public laundry]:

SEC. 5. No person or persons engaged in the laundry business within that portion of this city, described in section 1 of this order, shall permit any person suffering from any infectious or contagious disease to lodge, sleep, or remain within or upon the premises used by him, her, or them, for the purposes of a public laundry.

[Penalty.]

SEC. 6. Any person or persons establishing, maintaining, or carrying on the business of a public laundry or a public wash-house, where clothes or other articles are cleansed for hire, within the limits of this city and county, as described in section 1 of this order, without first having complied with the provisions of section 2 of this order, shall be guilty of a misdemeanor, and upon conviction thereof shall be punished by a fine of not more than one thousand dollars, or by imprisonment of not more than six months, or by both; and any person who shall violate the provisions of section 4 or 5 of this order shall be guilty of a misdemeanor, and upon conviction thereof shall be punished by a fine of not less than five dollars nor more than fifty dollars, or by imprisonment not more than one month, or by both such fine and imprisonment.

[Certificates of health officer and board of fire commissioners to to be exhibited in a conspicuous place.]

SEC. 7. The certificates from the health officer and the board of fire wardens, as required by section 2 of this order, shall be exhib-

ited in some conspicuous place on the premises, and the same shall be produced on the demand of any officer of the city and county of San Francisco.

[Police to enforce provisions of order.]

SEC. 8. The police authorities are hereby directed to have the provisions of this order strictly enforced.

[Repeal of all conflicting orders.]

SEC. 9. Order No. 1691, and all orders or parts of orders in conflict with any of the provisions of this order, are hereby repealed.

In board of supervisors, San Francisco, April 7, 1884.

After having been published five successive days, according to law, taken up and passed by the following vote:

Ayes: Supervisors Sullivan, Reichenbach, Shirley, Burton, Smith, Griffin, Strother, Lewis, Ranken, James, Ashworth.

Absent, Supervisor Pond.

JNO. A. RUSSELL, *Clerk.*

Approved: San Francisco, April 8, 1884.

WASHINGTON BARTLETT,
Mayor and ex-officio President Board of Supervisors.

11 [EXHIBIT B.]

In Police Judge's Court of the City and County of San Francisco, State of California.

THE PEOPLE OF THE STATE OF CALIFORNIA
against
FRANCIS BARBIER.

STATE OF CALIFORNIA, }
City and County of San Francisco, } ss.:

Now comes John S. Adams, who, being duly sworn, deposes and says: That about the hour of 11 o'clock p. m., on the 1st day of May, 1884, at No. 448 Jessie street, between Fifth street and Sixth street, in the city and county of San Francisco, State of California, one Francis Barbier did wilfully and unlawfully wash and iron clothes in a certain public laundry and public wash-house where clothes were then and there cleansed for hire, the said Francis Barbier being then and there the owner, and having control of said laundry wash-house, said time being between the hours of 10 o'clock p. m. of the 1st day of May, 1884, and 6 o'clock a. m. of the next day, and said place being within the following boundaries:

Commencing at the intersection of Devisadero street with the waters of the bay of San Francisco; thence following the bay shore easterly and southerly to the easterly end of Channel street; thence along Channel street in a westerly direction to Potrero avenue; thence southerly along Potrero avenue to Army street; thence westerly along Army street to Dolores street; thence northerly along Dolores street to and across Market street to Ridley street; thence westerly along Ridley street to Devisadero street, and thence nor-

therly along Devisadero street to the bay and point of commencement.

Thereby violating the provisions of section 4, order 1767 of the board of supervisors of the city and county of San Francisco, contrary to the form, force and effect of the statute in such cases made and provided, and against the peace and dignity of the people of the State of California.

And this complainant further says that the said accused was then and there arrested therefor in the actual commission of the said offense.

JOHN S. ADAMS,
Res and Place of Bus. ——

Subscribed and sworn to before me, this 2d day of May, A. D. 1884.
H. WATSON WEBB,
Judge of the Police Judge's Court of the City and County of San Francisco.

12 [Endorsed:] Violation of the laundry order of the board of supervisors. The People of the State of California *vs.* Francis Barbier. Complaint. Complainant, John S. Adams Filed in the police judge's court of the city and county of San Francisco, this 2d day of May, 1884. H. B. Cook, clerk.

13 EXHIBIT C.

Commitment.

In the Police Judge's Court of the City and County of San Francisco, State of California.

THE PEOPLE OF THE STATE OF CALIFORNIA *vs.* FRANCIS BARBIER.

STATE OF CALIFORNIA, }
City and County of San Francisco, } *ss.:*

The People of the State of California to the sheriff of the city and county of San Francisco, Greeting:

Whereas Francis Barbier having been duly convicted in the police judge's court of the city and county of San Francisco, State of California, of the crime of misdemeanor, as charged in the complaint, upon oath, in the above-entitled criminal action, and by said court sentenced and adjudged, as a punishment for said crime, to be imprisoned in the county jail of the city and county of San Francisco, State of California, for the period of five (5) days, as appears by the following full, true, and correct copy of the judgment rendered by said court, and entered in the minutes and docket of said court in the above-entitled criminal action.

Minute Docket.

In the Police Judge's Court of the City and County of San Francisco, State of California.

STATE OF CALIFORNIA,
City and County of San Francisco, } *ss:*
Court Room of said Court,

FRIDAY, *May 2nd*, 1884.

In open Court.

Present presiding: Hon. H. Watson Webb, judge of police judge's court.

Convicted of Misdemeanor.

THE PEOPLE OF THE STATE CALIFORNIA *vs.* FRANCIS BARBIER.

In this action the defendant personally appears for sentence. The court renders its judgment: That whereas the said Francis Barbier having been duly convicted in this court of the crime of misdemeanor, it is ordered and adjudged, as a punishment therefor, that the said Francis Barbier be imprisoned in the county jail of this city and county for the period of five (5) days.

These are, therefore, in the name of the people of the State of California to command you, the sheriff of the city and county of San Francisco, forthwith to take, arrest, and safely keep and imprison the said Francis Barbier in the county jail of the said city and county of San Francisco, State of California, for the period of five (5) days, and these presents shall be your authority for the same.

Witness my hand and the seal of the said police judge's court, this 2nd day of May, 1884.

[SEAL.]

H. WATSON WEBB,
Judge of the Police Judge's Court of the City and County of San Francisco.

14 [Endorsed:] Police judge's court. The People of the State of California *vs.* Francis Barbier. Convicted of misdemeanor. Commitment to county jail.

15 [Endorsed:] In the superior court, city and county of San Francisco. Francis Barbier *vs.* P. Connolly. Filed May 5th, 1884. Wm. T. Sesnon, clerk. By Sam'l Tevis, deputy clerk.

16 In the Superior Court of the City and County of San Francisco, State of California.

In re FRANCIS BARBIER, on *habeas corpus.*

The prisoner moves for his discharge on the following grounds: Section 4 of order 1767 is invalid, because—

1st. It violates the fourteenth article of the Constitution of the United States, and sections 1, 11, and 21 of article 1 of the constitution of California.

2nd. It is discriminating and special in this: It discriminates between the class of laborers engaged in the laundry business and those engaged in other classes of business, and is therefore void..

17 3rd. It discriminates between those west of Devisadero street and those east of said street.

4th. It discriminates between the different classes of persons engaged in the business, and is not, therefore, general and uniform in operation.

5th. It deprives a man of an inalienable right, viz., the right to labor, and, as a necessary result, the right to acquire property, contrary to article 1, section 1, constitution of California, and contrary to the Federal Constitusion.

6th. Section 4 of the ordinance set out in the petition is void, on the ground that it is not within the police power of the board of supervisors of the city and county of San Francisco.

7th. Said section is void, on the ground that it discriminates between those engaged in the laundry business and those engaged in other classes of business.

18 8th. Said section is void, on the ground that it discriminates between the different classes of persons engaged in the laundry business.

9th. Said section is void, on the ground that it deprives a man of the right to labor at all times.

10th. Said section is void, on the ground that it is unreasonable in its requiremenss, in restraint of trade, or upon any other ground apparent upon the face of the ordinance or appearing in the petition.

Respectfully submitted, WM. E. HALL,
Att'y for Petitioner.

Service acknowledged. ALFRED CLARKE,
Att'y for Respondent.

19 [Endorsed:] No. 2427. Dep't No. 1. In the superior court, city and city of San Francisco. *In re* Francis Barbier on *habeas corpus.* Brief for petitioner. Filed May 5th, 1884. Wm. T. Sesnon, clerk. By Sam'l Tevis, deputy clerk.

20 In the Superior Court of the City and County of San Francisco, State of California.

In re FRANCIS BARBIER, on *habeas corpus.*

The respondent contends that the writ should be dismissed, and the prisoner remanded.

The questions involved have been already decided in this court *in re* Nov Yeck, November, 1883.

It is true that subsequently the Hon. Noble Hamilton, judge of the superior court of Alameda county, afterwards sustained the objections to the order and discharged Nov Yeck, (12 Pacific Coast Law Journal, 382;) but the latter decision was reversed by the supreme court in *ex-parte* Moynier. 1 West Coast Reporter, 782.

21 The Moynier decision was adhered to by the supreme court in bank, March 13th, 1884, on the application of Soon Hing for a writ of *habeas corpus*.

Subsequently the counsel for Soon Hing applied to the circuit court of the United States for a writ, which was denied by the circuit judge, and it is understood that the question has been certified April 7th 1884. Certificate of opposition of opinion. No. 190, case No. 3275. Circuit court for the district of California to the Supreme Court of the United States.

Respectfuly submitted. ALFRED CLARKE,
Counsel for Respondent.

Service acknowledged.

WM. E. HALL,
Att'y for Petitioner.

22 [Endorsed:] No. 2427. Dep't No. 1. In the superior court, city and county of San Francisco. *In re* Francis Barbier on *habeas corpus*. Brief for respondent. Filed May 5th, 1884. Wm. T. Sesnon, clerk. By Samuel Tevis, deputy clerk.

23 In the Superior Court of the City and County of San Francisco, State of California.

In re FRANCIS BARBIER, on *Habeas Corpus*.

Stipulated that this matter be submitted for decision on the return and the briefs of the respective counsel, which are filed herewith.

WM. E. HALL,
Att'y for Petitioner.
ALFRED CLARKE,
Att'y for Respondent.

24 [Endorsed:] No. 2427. Dep't No. 1. In the superior court, city and county of San Francisco. *In re* Francis Barbier on *habeas corpus*. Stipulation. Filed May 5th, 1884. Wm. T. Sesnon, clerk. By Sam'l Tevis, deputy clerk.

25 In the Superior Court of the City and County of San Francisco, State of California.

In re FRANCIS BARBIER, on *habeas corpus*.

This cause having been submitted for decision on the return to the writ, and the briefs of the respecive parties which yet remain on file herein, it is ordered that the writ be dismissed and the prisoner remanded.

T. K. WILSON, *Judge*.

26 [Endorsed:] No. 2427. Dep't No. 1. In the superior court, city and county of San Francisco. *In re* Francis Barbier on *habeas corpus*. Order. Filed May 5th, 1884. Wm. T. Sesnon, clerk. By Sam'l Tevis, deputy clerk.

27 In the Superior Court, City and County of San Francisco, State of California. Department No. One. Monday, May the 5th, A. D. 1884. Present: Hon. T. K. Wilson, Judge.

Copy of minute order entered in Book 1, page 437, of the minutes of said court.

In Re Application of FRANCIS BARBIER, on *habeas corpus*.

Said application having been duly submitted for the consideration and decision of the court, and now the court having fully considered the same, orders that the writ herein be dismissed and prisoner remanded.

28 Know all men by these presents, that we, John Shirley, at 536 Kearney St., and J. B. Lewis, of No. 500 Montgomery St., both of the city and county of San Francisco, are held and firmly bound unto P. Connolly in the sum of two hundred dollars, lawful money of the United States of America, to be paid to the said P. Connolly, his executors, administrators, or assigns, for which payment well and truly to be made, [we] bind our heirs, executors, and administrators, firmly by these presents. Sealed with — seals, and dated the eighth day of May, one thousand eight hundred and eighty-four.

The condition of the above obligation is such that whereas the above-named Francis Barbier, hath prosecuted a writ of error from the Supreme Court of the United States to reverse the judgment rendered by the superior court of the city and county of San Francisco, in a certain proceeding, wherein said Francis Barbier was petitioner, and said P. Connolly was respondent:

Now, therefore, the condition of this obligation is such, that if the above-named Francis Barbier shall prosecute his said writ of error to effect, and answer all costs, if he shall fail to make good his plea, then this obligation shall be void; otherwise to remain in full force and virtue, then the above obligation to be void, otherwise to remain in full force and virtue.

JOHN SHIRLEY. [SEAL.]
J. B. LEWIS. [SEAL.]

Signed, sealed, and delivered in the presence of—
T. D. McKENNA,
628 *Valencia St., S. F., Cal.*

29 STATE OF CALIFORNIA, }
City and County of San Francisco, } *ss*:

Being duly sworn each for himself, deposes and says: That he is a resident of the city and county of San Francisco, in the State of California, and is worth the sum of two hundred dollars, exclusive of property, exempt from execution, and over and above all debts and liabilities.

JOHN SHIRLEY.
J. B. LEWIS.

Subscribed and sworn to before me, this 12th day of May, 1884.

J. F. CARPENTER,
Deputy County Clerk.

30 (Endorsed:) In Supreme Court of the United States. Francis Barbier, plaintiff in error, to P. Connolly, defendant in error. Bond on writ of error, dated May 8th, 1884. The form of the within bond, and the sufficiency of the sureties thereon are hereby approved. Dated May 8th, A. D. 1884. John Hunt, presiding judge of the superior court, city and county of San Francisco, State of California. Filed May 13th, 1884. Wm. T. Sesmon, clerk. By D. C. Van Nostrand, deputy clerk.

31 In the Superior Court of the State of California.

I, Wm. T. Sesnon, clerk of the superior court of the city and county of San Francisco, State of California, do hereby certify, that the foregoing 30 pages, written pages, numbered from 1 to 30, both inclusive, are a true copy of the record, and of all the proceedings in the cause therein entitled, and that the same together constitute the return to the annexed writ of error.

I further certify, that the written opinion hereto attached is a true and corect copy of the original, delivered at the rendering of the decision in the therein-entitled cause, May 5th, A. D. 1884.

Witness my hand and seal of the court, this 13th day of May, A. D. 1884.

[SEAL.]

WILLIAM T. SESNON, *Clerk.*
By D. C. VAN NOSTRAND,
Deputy Clerk.

32 *Assignment of Error and Prayer for Reversed.*

In the Supreme Court of the United States.

FRANCIS BARBIER, Plaintiff in Error,
vs.
P. CONNOLLY, Defendant in Error.

To the honorable the Supreme Court of the United States:

The plaintiff in error specifies the error of which he complains as follows:

The superior court erred in remanding the plaintiff in error, because the order under which he was held in custody is invalid for the following reasons:

1st. It violates the fourteenth article of the Constitution of the United States, and sections 1, 11, and 21 of article 1 of the constitution of California.

2nd. It is discriminating and special in this: it discriminates between the class of laborers engaged in the laundry business and those engaged in other classes of business, and is therefore void.

3rd. It discriminates between those west of Devisadero street and those east of said street.

4th. It discriminates between the different classes of persons engaged in the business, and is not, therefore, general and uniform in operation.

33 5th. It deprives a man of an inalienable right, viz., the right to labor, and, as a necessary result, the right to acquire property, contrary to article 1, section 1, constitution of California, and contrary to the Federal Constitution.

6th. Section 4 of the ordinance set out in the petition is void, on the ground that it is not within the police power of the board of supervisors of the city and county of San Francisco.

7th. Said section is void, on the ground that it discriminates between those engaged in the laundry business and those engaged in other classes of business.

8th. Said section is void, on the ground that it discriminates between the different classes of persons engaged in the laundry business.

9th. Said section is void, on the ground that it deprives a man of the right to labor at all times.

10th. Said section is void, on the goound that it is unreasonable in its requirements in restraint of trade, or upon any other ground apparent upon the face of the ordinance or appearing in the petition.

Therefore the judgment should have been for the discharge of the plaintiff in error.

34 Wherefore the plaintiff in error prays that the decision complained of be reversed, and he have such relief as may be proper in the premises.

Respectfully submitted.

A. C. SEARLE,
Attorney for Plaintiff in Error.

(Endorsed:) Filed May 13th, 1884. William T. Sesnon, clerk, by D. C. Van Nostrand, deputy clerk.

35 [Endorsed:] No. —. Supreme Court of the United States. Francis Barbier, pl'ff in error, *vs.* Patrick Connolly, def't in error. A. C. Searle, attorney for p'ff in error. H. G. Sieberst, attorney for def't in error. Alfred Clarke, of counsel; address, Old City Hall, San Francisco.

Endorsed on cover: California superior court, city and county of San Francisco. No. 871. Francis Barbier, plaintiff in error, *vs.* Patrick Connolly. Filed 24th June, 1884.

113-27

Office Supreme Court, U.S.
FILED.
NOV 10 1884
JAMES H. McKENNEY,
CLERK.

BRIEF FOR PLAINTIFF.

In the Supreme Court of the United States.

OCTOBER TERM, 1884.

No. 871.

PHILADELPHIA BAR ASSOCIATION

FRANCIS BARBIER, PLAINTIFF IN ERROR,

vs.

PATRICK CONNOLLY

IN ERROR TO THE SUPERIOR COURT OF THE CITY AND COUNTY OF SAN FRANCISCO, STATE OF CALIFORNIA.

A. C. SEARLE, Attorney for the Plaintiff in Error.
H. G. SIEBERST, Attorney for Defendant in Error.
ALFRED CLARKE, of Counsel.

Address of Counsel, Old City Hall, San Francisco, Cal.

Donovan & Shahan, Law Printers, 521 Clay St., San Francisco, Cal.

In the Supreme Court of the United States.

OCTOBER TERM, 1884.

No. 871.

FRANCIS BARBIER, PLAINTIFF IN ERROR,

vs.

PATRICK CONNOLLY

IN ERROR TO THE SUPERIOR COURT OF THE CITY AND COUNTY OF SAN FRANCISCO, STATE OF CALIFORNIA.

Brief for Plaintiff.

This is a writ of error to the superior court of San Francisco, which is the highest state court having jurisdiction to try offenders under the ordinances of the city and county of San Francisco.

The plaintiff was convicted of and sentenced for violating section 4 (vide transcript, p. 6) of order number 1767 of the board of supervisors of San Francisco "regulating public laundries," (vide transcript, pp. 4-7 inclusive.)

The plaintiff claims that said ordinance is void, for the reasons set forth in the following specification of errors. (See transcript, pages 13 and 14.)

To the honorable the Supreme Court of the United States:

The plaintiff in error specifies the errors of which he complains as follows:

The superior court erred in remanding the plaintiff in error, because the ordinance under which he was held in custody is invalid, for the following reasons:

1st. It violates the fourteenth article of the constitution of the United States, and sections 1, 11, and 21 of article 1 of the constitution of California.

2d. It is discriminating and special in this: it discriminates between the class of laborers engaged in the laundry business and those engaged in other classes of business, and is therefore void.

3d. It discriminates between those west of Devisadero street and those east of said street.

4th. It discriminates between the different classes of persons engaged in the business, and is not, therefore, general and uniform in operation.

5th. It deprives a man of an inalienable right, viz. the right to labor, and as a necessary result, the right to acquire property, con-

NOTE. "In Habeas Corpus the Supreme and Superior Courts are peers." Santa Cruz, etc., v. Santa Clara, etc., 62 Cal., 40.

trary to article 1, section 1, constitution of California, and contrary to the federal constitution.

6th. Section 4 of the ordinance set out in the petition is void, on the ground that it is not within the police power of the board of supervisors of the city and county of San Francisco.

7th. Said section is void, on the ground that it discriminates between those engaged in the laundry business and those engaged in other classes of business

8th. Said section is void, on the ground that it discriminates between the different classes of persons engaged in the laundry business.

9th. Said section is void, on the ground that it deprives a man of the right to labor at all times.

10th. Said section is void, on the ground that it is unreasonable in its requirements in restraint of trade, or upon any other ground apparent upon the face of the ordinance or appearing in the petition.

Therefore the judgment should have been for the discharge of the plaintiff in error. (Re Woo Yeck, by Hamilton, J., page 5, post.)

POINTS AND AUTHORITIES.

1st. The section is in violation of the constitution of this state and the U. S. constitution:

Art. 1, sec. 1, Cal. const.; art. 1, sec. 11, Cal. const.; art. 1, sec. 21, Cal. const; 14th amendment, U. S const.

It is discriminating and special in this—

2d. It discriminates between the class of laborers engaged in the laundry business and those engaged in other classes of business, and is therefore void.

The only ground on which Sunday laws have ever been upheld is that they were necessary as a sanitary measure, in order to secure one day of rest out of seven to laborers. But in all cases in which they were upheld they were general laws, and the only exceptions to the laws were those classes of business which it was absolutely necessary should be carried on on Sunday, such as hotels, restaurants, drug stores, etc. (Ex parte Andrews, 18 Cal. 678; Ex parte Bird, 19 Cal. 130; Ex parte Burke, 59 Cal. 6; Ex parte Koser, 60 Cal. 190.)

The ordinance in question, however, singles out the laundry business, and allows other classes of business to be carried on on Sundays, and at all other times.

This too after the repeal of the Sunday law by the legislature.

3d. It discriminates between those west of Devisadero street, and those east of said street.

We cannot comprehend on what ground this distinction can be sustained. Such distinctions are allowable in fire ordinances and other ordinances of a like character, on the ground that in the midst of the business portion of the city, the erection of frame buildings are dangerous, or in ordinances excluding hospitals,

slaughter houses and other classes of business outside of the thickly populated portions of the city, on the ground that they are nuisances *per se*.

If the washing and ironing of clothes is dangerous on account of fire (and we cannot perceive how it is) then it is just as dangerous by day as by night, or if it is a nuisance then, it is as much of a nuisance by day as by night.

In either event, the method adopted by the board is not the proper one to reach the evil.

If the laundry business is a nuisance or dangerous on account of fire, or dangerous to the health of the inhabitants, the proper way of remedying the evil is by confining it to certain limits, just as the supervisors have in sections 1 and 2 of this order, and as they have also done in the cases of slaughter houses.

4th. It discriminates between the different classes of persons engaged in the business, and is not therefore of general and uniform operation.

It prohibits those who are engaged in the branch of washing and ironing from working, but it permits those engaged in other branches of the business, such as fluting, polishing, blueing starching, drying and wringing, all of which are separate and distinct branches of the business, and require separate and skilled workmen to labor.

This vitiates the ordinance. (Ex parte Westerfield, 55 Cal. 550; Ex parte Koser, 60 Cal. 191.)

5th. It deprives a man of an inalienable right, viz: the right to labor, and as a necessary result, the right to acquire property, a right guaranteed to him by art. 1, sec. 1, of our constitution, and also by the federal constitution.

If this business is a nuisance or dangerous on account of fire, or to the health of the inhabitants, the supervisors may restrict it to certain limits, or may prescribe the mode or manner in which it shall be carried on; in other words, they may regulate but they cannot prohibit. They cannot say to one class of the workmen engaged in the laundry business, you may labor at all times, and to another class in the same business, you can only labor during certain hours; nor can they say to any class of laborers, or to laborers generally, you shall not work during certain hours.

And this is the worst vice of this section.

In the eight-hour law case, this court said the legislature might pass a law prohibiting contractors from compelling laborers to work more than eight hours, but they could not prohibit the laborers from working more than eight hours if they so desired for extra pay; for as the court say, it may be absolutely necessary for a man in order to support himself and family, to labor more than eight hours. (Drew v. Smith, 38 Cal. 329; Ex parte Koser, 60 Cal. 212.)

The right to labor is an inalienable right. (In re Parrott, 5 P. C. L. J.)

6th. Section 4 of the ordinance set out in the petition is void, on the ground that it is not within the police power of the board of supervisors of the city and county of San Francisco. (Re Woo Yeck, by Hamilton, J., page 5, post.)

7th Said section is void, on the ground that it discriminates between those engaged in the laundry business and those engaged in other classes of business. (Re Woo Yeck, by Hamilton, J., page 5, post.)

8th. Said section is void on the ground that it discriminates between the different classes of persons engaged in the laundry business. (Re Woo Yeck, by Hamilton, J., page 5, post.)

9th. Said section is void, on the ground that it deprives a man of the right to labor at all times. (Re Woo Yeck, by Hamilton, J., page 5, post.)

10th. Said section is void, on the ground that it is unreasonable in its requirements in restraint of trade, or upon any other ground apparent upon the face of the ordinance or appearing in the petition. (Re Woo Yeck, by Hamilton, J., page 5, post.)

As previously stated, we cannot conceive of any ground on which this section can be upheld. As a sanitary measure? No! As a protection against fire? No! In either of these cases the remedy is the one adopted by the supervisors in secs. 1 and 2.

In these sections they prohibit the laundry business within certain limits without a permit. Yet, after they grant a permit, they say you shall only labor 96 hours out of 198.

Can the section be upheld on the ground that the business is a nuisance? No! If the business is a nuisance *per se*, the provisions of the code on the subject of nuisance afford an ample remedy. (C. C. P., sec. 731; C. C., secs. 3479-80-1-91, 3501; penal, 370, 372.)

Besides, if it is a nuisance *per se*, the supervisors can exclude it from certain limits. If it is not a nuisance *per se*, but is carried on in such a manner as to become a nuisance, then they can prescribe the mode or manner in which it shall be conducted.

But the business is not a nuisance *per se*. (In re Quong Woo, 9 P. C. L. J. 815.)

The business of washing clothes is a necessary sanitary business.

Nor do the recitals in the preamble to the ordinance make the business a nuisance. If so, then the board might declare the practice of law a nuisance.

In the case of ex parte Woo Yeck on habeas corpus, petitioner applied to this honorable court for a writ of habeas corpus. A writ was issued by order of his honor Judge Thornton, and made returnable before Judge Hamilton of Alameda county. The case was there argued and submitted, and Judge Hamilton rendered a decision declaring the ordinance unconstitutional, which decision was as follows:

"*In the Superior Court of the County of Alameda, State of California, Department No.* 3.

"In re Woo Yeck on habeas corpus.

"Alfred Clarke for respondent. Thos. D. Riordan for petitioner.

"N. Hamilton, J. delivered the opinion of the court.

"The petitioner, in whose behalf the writ was granted by the supreme court of this state, returnable before the undersigned, judge of the superior court of Alameda county, department 3, for hearing and determination of the matters alleged, and the same having been heard and tried, and the matters having been argued by the attorneys on behalf of the municipality and on behalf of petitioner, and the respective attorneys having filed their briefs, and the matter having been submitted for decision, and having been duly considered, the following decision is rendered, to wit:

"The petitioner is in custody of Patrick Crowley, as chief of police of the city and county of San Francisco, upon process issued out of the police court of said city and county, upon a complaint filed therein charging said Woo Yeck with misdemeanor, for having, as is alleged, violated section 4 of order number 1719 of the board of supervisors of said city and county, entitled 'An order regulating the establishment and maintenance of public wash-houses in the city and county of San Francisco.' Said section 4 is as follows:

"Section 4. No person or persons owning or employed in the public laundries or public wash-houses provided for in section 1 of this order, shall wash or iron clothes between the hours of 10 o'clock P. M. and 6 o'clock A. M., nor upon any portion of that day known as Sunday.

"The complaint charges that said Woo Yeck, on or about the 28th day of August A. D. 1883, committed a misdemeanor by violating that portion of said section 4 which forbids any of the persons named therein from washing or ironing clothes between the hours of 10 o'clock P. M. and 6 o'clock A. M.

"The question argued and sought to be determined is as to the validity of said section 4 of said order.

"It may be conceded that if there is anything in the nature of this business itself, or the mode of conducting it, that makes it or causes it to become a nuisance, as nuisance is defined by the general laws of the state, in the penal code, the civil code and the code of civil procedure, *and in no other case*, then the board of supervisors of said city and county are empowered by the consolidation act and the new constitution, by proper order, to prevent or summarily remove such nuisances, or they may pursue the remedies for their abatement provided in said codes.

"But if there be nothing in the business itself nor in the mode in which it is carried on to constitute it a nuisance, as defined by the codes aforesaid, and all the regulations of the municipal corporation

to secure protection from fire, to preserve the health of the community by having proper sewerage, so that neither the public peace, health, morals, or safety of the community is endangered thereby, have been complied with by the person or persons owning or carrying on the business, or employed therein, then neither the municipality of San Francisco nor the legislature of the state, nor any other power under this government, can go farther and interfere with the business by prescribing the hours within which portions of said business shall or shall not be carried on, and during which laborers employed therein shall or shall not labor. An order of the board of supervisors that attempts this, as is the order in question, is an unjust, unreasonable and unwarrantable interference with the natural and inalienable right of every individual under the government to life, liberty and the pursuit of happiness, and to acquire, hold and enjoy property, rights never surrendered to government, which are fully recognized and protected by the constitution of the United States and of this state,and in order to acquire property or to obtain an honest livelihood, such individual may labor during any hours of the day or night as he may voluntarily select, or his necessities may force him to employ. If this ordinance can be sustained as to the laundry business, then a similar order can be enforced as to every business, and the board of supervisors may as well enter the printing establishments and prescribe the hours of day or night within which it shall be unlawful to set type, or run their presses, and thus create confusion confounded; or if this business be selected for such regulation on account of the noise attending the washing and ironing of clothes, as contended by counsel for the municipality, why not, as more noisy, have forbidden the entry into the city before sunrise of meat wagons, vegetable and milk wagons, and forbid the various manufactories that run night and day from operating, or stop the steam engines, and forbid the running of railroad trains during certain hours of the night; or why not require the various places of amusement and saloons to close business after 10 o'clock P. M., or in fact, enter into and regulate the hours and modes of work of any laborer or business carried on in the city.

"I am of the opinion that section 4 of said order number 1719 is unreasonable, unjust, discriminating, unauthorized by law and void.

"It follows, the defendant is unlawfully restrained of his liberty, and must be discharged, and it is so ordered, and the writ dismissed."

SUMMARY.

We claim on behalf of petitioner—

1st. That the ordinance is discriminating and special.

2d. That it deprives petitioner of a constitutional privilege, viz: the right to labor at all times.

Respondent claims—

1st. That section 5 is intended to prevent noises which are incidental to this business.

2d That it is intended to prevent fires occurring in laundries during those hours.

We say in reply—

1st. That the argument as to the danger from fire is answered by section 2 of the ordinance, which requires a permit from the board of fire wardens that all the fire ordinances have been complied with, and which raises the presumption when issued that there is no danger from fire in the laundry, and by the ordinances which require laundries to be carried on in fireproof brick buildings.

2d. The danger from fire is not overcome by the section, because the most dangerous portion of the business—the drying of clothes—may be carried on during those hours, and furnaces may be kept in operation at all times; and all other portions of the business except washing and ironing carried on between those hours.

3d. Noise is not an incident to the washing and ironing of clothes. If it is, the ordinance does not prohibit it; because creating a noise at night is a misdemeanor, and is provided for in the penal code.

4th. If the prevention of noise is the object, the board can regulate the business so as to prevent it, but they cannot prohibit the business.

Wherefore, plaintiff prays that the judgment of the superior court be reversed.

Respectfully submitted,

A. C. SEARLE,

Attorney for Plaintiff.

Due service of the above brief is hereby admitted, this 27th day of October, 1884.

H. G. SIEBERST,

Attorney for Defendandant.

ALFRED CLARKE, of counsel. Address, Old City Hall, S. F.

ALFRED CLARKE, of counsel. Address, Old City Hall, S. F.

113-27

Office Supreme Court U. S.
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CLERK.

BRIEF FOR DEFENDANT.

In the Supreme Court of the United States.

OCTOBER TERM, 1884.

No. 871.

FRANCIS BARBIER, PLAINTIFF IN ERROR,

vs.

PATRICK CONNOLLY

IN ERROR TO THE SUPERIOR COURT OF THE CITY AND COUNTY OF SAN FRANCISCO, STATE OF CALIFORNIA.

H. G. SIEBERST, Attorney for Defendant in Error.
ALFRED CLARKE, of Counsel.
A. C. SEARLE, Attorney for the Plaintiff in Error.

Address of Counsel, Old City Hall, San Francisco, Cal.

Donovan & Shahan, Law Printers, 521 Clay St., San Francisco, Cal.

In the Supreme Court of the United States.

OCTOBER TERM, 1884.

No. 871.

FRANCIS BARBIER, PLAINTIFF IN ERROR,

vs.

PATRICK CONNOLLY

IN ERROR TO THE SUPERIOR COURT OF THE CITY AND COUNTY OF SAN FRANCISCO, STATE OF CALIFORNIA.

Brief for Defendant.

The defendant claims that the ordinance in question is not invalid for any of the reasons given by the plaintiff.

The preamble of the ordinance sufficiently explains its meaning. (Vide transcript, p 4.)

The Power of the Board of Supervisors to Pass the Order in Question, and the Decisions of the Supreme Court Pertinent Thereto.

Section 1. The board of supervisors shall have power * * *

9th. To prohibit the erection of wooden buildings or structures within any fixed limits, where the streets have been established and graded, or ordered to be graded; or to regulate the sale, storage and use of gunpowder, or other explosive or combustible materials or substances, *and make all needful regulations for protection against fire.* (Sec. 74 of the consolidation act, as amended May 18th, 1861. Stat. 1861, p. 544.)

Section 1. The board of supervisors shall have power * * *

1st. To regulate the police and police force of said city and county, and to prescribe their powers and duties.

2d. To authorize and direct the summary abatement of nuisances; to make all regulations which may be necessary or expedient for the preservation of the public health, and the prevention of contagious diseases; to provide, by regulation, for the prevention and summary removal of all nuisances and obstructions in the streets, alleys, highways and public grounds of said city and county; and to prevent or regulate the running at large of dogs, and to authorize the destruction of the same, when at large contrary to ordinance.

3d. To prohibit and suppress, or exclude from certain limits, all houses of ill-fame, prostitution and gaming; to prohibit and suppress, or exclude, from certain limits, or to regulate, all occupations,

houses, places, pastimes, amusements, exhibitions and practices which are against good morals, contrary to public order and decency, or dangerous to public safety. (Sec. 1, act to confer, etc., approved April 25, 1863, stat. 1863, p. 540.)

Sec 3. The board of supervisors * * * shall have power * * * to regulate all such callings, trades and employments as the public good may require to be licensed and regulated, as are not prohibited by law (Sec. 3, act of March 30, 1872, stat. 1871-2, p. 736)

Art. 11, sec. 11, const. Cal.: A. D. 1879

Any county, city, town or township may make and enforce within its limits all such local, police, saintary and other regulations as are not in conflict with general laws. (Const Cal., art. 11, sec 11.)

The decisions bearing on the validity of the ordinance are—

Ex parte Shrader, 33 Cal. 297; Ex parte Keating, 38 Cal. 702; Ex parte Delaney, 43 Cal. 478; Ex parte Ah Toy, 57 Cal. 92; Ex parte Cassinello, 62 Cal. 538; Ex parte Ah Sing, 59 Cal. 404; Ex parte Chin Yan, 60 Cal. 78; Los Angeles v. S. P. R. R. Co, 61 Cal. 59; Ex parte Stuart, 61 Cal. 374; Ex parte Benninger, 12 Pac. Coast Journal, 301.

The opinion of Judge Hamilton in the case of Woo Yeck which is relied on by the plaintiff, was expressly overruled by the Supreme Court of California, in the following decision. (Counsel by stipulation filed herewith forwards to the Hon. Supreme Court of the United States the briefs on which the Moynier case was decided.)

Supreme Court of the State of California.

"Ex parte Moynier. Department two. Filed February 8th, 1884.

"Wilson & Perry, for petitioner. Thomas D. Riordan, *amicus curiæ*.

"Alfred Clarke, for respondent.

"Hearing on a writ of habeas corpus. The opinion states the facts:

"MYRICK, J. The prisoner was arrested and is in custody for a violation of section 4, of order number 1719, of the board of supervisors of the city and county of San Francisco. The ordinance was approved June 25th, 1883. Section 4 declares that 'no person or persons owning or employed in public laundries or public wash-houses, provided for in section 1 of this order, shall wash or iron clothes between the hours of ten o'clock P. M. and six o'clock A. M., nor upon any portion of that day known as Sunday.' Section one declares it to be unlawful for any person to establish, maintain or carry on the business of a public laundry or wash-house, where articles are cleaned for hire, within certain named limits, without first obtaining a certificate from the health officer that the premises are sufficiently drained and that the business can be carried on without injury to the sanitary condition of the neighborhood, and a certificate from the board of fire wardens that the heating appliances are in good condition, and that their use is not dangerous to the surrounding property. The peti-

tioner claims that the order is void, in that it conflicts with the fo. teenth amendment to the Constitution of the United States, an. with sections 1, 11 and 21 of art. 1 of the constitution of this state.

"We do not see that the enforcement of this order would abridge the privileges or immunities of citizens of the United States, or that it would deprive any person of liberty or of property without due process of law, or deny to any person in this state the equal protection of the laws. Section 1 of article 1 of the constitution of this state declares that all men have the inalienable right of acquiring, possessing and protecting property, and pursuing and obtaining safety and happiness; section 11 of the same article declares that all laws of a general nature shall have a uniform operation; and section 21 declares that no citizen or class of citizens shall be granted privileges or immunities which, upon the same terms, shall not be granted to all citizens.

"We do not deem it necessary to go into an elaborate and extended consideration of the propositions advanced, nor to do more than quote another section of the state constitution, and show its application to the subject in hand. Section 11 of article XI provides, that 'any county, city, town or township may make or enforce within its limits all such local, police, sanitary and other regulations as are not in conflict with general laws.'

"That the regulations of the order are, as to portions (perhaps all) police regulations, and as to some, sanitary, we have no doubt. Those portions of the order relating to safety from fire, are police regulations; that relating to drainage, may also be classed as police, and is sanitary; that relating to drainage is also sanitary It is true, all persons may acquire, possess and protect property, and may pursue and obtain safety and happines; but these rights must be exercised with reference to the rights of others; and whenever it is necessary for the health or protection of members of the community that regulations should exist and be enforced, the power is given by the constitution to local authorities to make and enforce such regulations. We cannot say that proper drainage in carrying on the laundry business is not necessary to the health, neither can we say that property is secure from fire if proper precautions are not taken.

"The order is not discriminating and special, in any such sense as to make it repugnant to the constitution. Its terms apply to all persons establishing, maintaining or carrying on the business of a public laundry or public wash-house where articles are cleansed for hire within certain limits. It is no more special and discriminating than the prohibition of the storage of powder, or the slaughtering of animals, both of which may be necessary to be done, but for the regulation of which the power is unquestioned. We cannot say the limits prescribed in the order are not proper limits for public health and safety. As to the provisions of section 4 of the order, which the petitioner was charged with having violated, we cannot say it is not

essary for the proper police and sanitary condition of the city that ne business referred to should cease during the hours from 10 o'clock P. M. to 6 o'clock A. M., and during the day known as Sunday.

"The petitioner is remanded."

MORRISON, C. J., and THORNTON, J., concurred.

—(1 West Coast Reporter, 782.)

The defendant claims that the ordinance is valid, and prays that the judgment be affirmed.

Respectfully submitted,

H. G. SIEBERST,
Attorney for Defendant in Error.

ALFRED CLARKE, of counsel. Address, Old City Hall, S. F.

Due service of the above brief is hereby admitted, this 30th day of October, 1884.

A. C. SEARLE,
Attorney for the Plaintiff in Error.

113-33

TRANSCRIPT OF RECORD.

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1883.

No. ~~278~~ 19

THE LIVERPOOL, NEW YORK AND PHILADELPHIA STEAMSHIP COMPANY, PLAINTIFF IN ERROR,

vs.

THE COMMISSIONERS OF EMIGRATION.

IN ERROR TO THE CIRCUIT COURT OF THE UNITED STATES FOR THE SOUTHERN DISTRICT OF NEW YORK.

FILED AUGUST 22, 1881.

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1883.

No. 278.

THE LIVERPOOL, NEW YORK AND PHILADELPHIA STEAMSHIP COMPANY, PLAINTIFF IN ERROR,

vs.

THE COMMISSIONERS OF EMIGRATION.

IN ERROR TO THE CIRCUIT COURT OF THE UNITED STATES FOR THE SOUTHERN DISTRICT OF NEW YORK.

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1 UNITED STATES OF AMERICA, *ss.*

The President of the United States of America to the Judges of the Circuit Court of the United States for the Southern District of New York, greeting:

Because in the record and proceedings, as also in the rendition of the judgment of a plea which is in the said Circuit Court, before you, or some of you, between the Liverpool, New York and Philadelphia Steamship Company, plaintiff, and the Commissioners of Emigration, defendants, a manifest error hath happened, to the great damage of the said plaintiff, as is said, and as appears by its complaint: We, being willing that such error, if any hath been, should be duly corrected, and full and speedy justice done to the parties aforesaid in this behalf, do command you, if judgment be therein given, that then, under your seal, distinctly and openly, you send the record and proceedings aforesaid, with all things concerning the same, to the Justices of the Supreme Court of the United States at the Capitol in the city of Washington, together with this writ, so that you have the same at the said place before the justices aforesaid, on the second Monday of October, 1881, that the record and proceedings being inspected, the said Justices of the Supreme Court may cause further to be done therein, to correct that error, what of right and according to the law and custom of the United States ought to be done.

Witness the Honorable Morrison R. Waite, Chief Justice of the Supreme Court of the United States, this eighth day of June, in the year of our Lord one thousand eight hundred and eighty-one, and of the independence of the United States the one-hundred and fifth.

[SEAL.] JOSEPH M. DEUEL,
Clerk of the Circuit Court of the United States of America, for the Southern District of New York, in the Second Circuit.

The foregoing writ is allowed. June 8th, 1881.
SAM'L BLATCHFORD,
Circuit Judge.

2 (Endorsed:) U. S. Supreme Court. E. & A. A. 334. The Liverpool, New York and Philadelphia Steamship Company, plaintiff, vs. The Commissioners of Emigration, defendants. Writ of Error. Alexander & Green, pl'ff's attorneys, 120 Broadway, New York City. Due and timely service of a copy of the within writ of error is hereby admitted, this 9th day of June, 1881. Lewis Saunders, defts' att'y.

UNITED STATES OF AMERICA, }
SOUTHERN DISTRICT OF NEW YORK, } *ss.*

I, Joseph M. Deuel, clerk of the Circuit Court of the United States of America for the Southern District of New York,

3 in the Second Circuit, by virtue of the foregoing writ of error, and in obedience thereto, do hereby certify that the following pages, numbered from four to thirty-five, inclusive, contain a true and complete transcript of the record and proceedings had in said court in the case of the Liverpool, New York and Philadelphia Steamship Company, plaintiffs in error, against the Commissioners of Emigration, defendants in error, as the same remain of record and on file in said office.

In testimony whereof, I have caused the seal of the said court to be hereunto affixed, at the city of New York, in the Southern District of New York, in the Second Circuit, this twenty-seventh day of June, in the year of our Lord one thousand eight hundred and eighty-one, and of the independence of the said United States the one hundred and fifth.

[SEAL.] JOSEPH M. DEUEL, *Clerk.*

4 The President of the United States of America to the Marshal of the Southern District of New York, greeting:

We command you that you take the Commissioners of Emigration, a corporation of the State of New York, defendant, if they shall be found in your district, and them safely keep so that they may have their bodies before the Judges of the Circuit Court of the United States of America for the Southern District of New York, in the Second Circuit, to be held at the United States court buildings, No. 41 Chambers street, in the city of New York, in the said Southern District, on the first Monday of February, 1877, to answer unto the Liverpool, New York and Philadelphia Steamship Company, a corporation of the Kingdom of Great Britain, plaintiff in a plea of assumpsit; and also to a certain bill of the said plaintiff against the said

{ L. S. } { Capias. }

5 defendant for the recovery of one million and ninety-three thousand dollars, on account of breach of implied promises according to the custom of said court, before the said judges, then and there to be exhibited, and that you have then there this writ.

Witness the Honorable Morrison R. Waite, Chief Justice of the Supreme Court of the United States, at the city of New York, the twelfth day of January, in the year one thousand eight hundred and seventy-seven, and of the independence of the United States the one hundred and first.

JOHN I. DAVENPORT, *Clerk.*

ALEXANDER & GREEN,
Plaintiff's Attorneys.

(Endorsed:) U. S. Circuit Court for the Southern District of New York. The Liverpool, New York and Philadelphia Steamship Company vs. The Commissioners of Emigration. Alexander & Green, pl'ff's att'ys. Due service of a copy within capias admitted this day of 1877. Lewis Saunders, defts' att'y.

6 UNITED STATES OF AMERICA:

Circuit Court of the United States for the Southern District of New York.

THE LIVERPOOL, NEW YORK & PHILADELPHIA Steamship Company *against* THE COMMISSIONERS OF EMIGRATION.	In Second Circuit, for the October Term in the year 1876.

SOUTHERN DISTRICT OF NEW YORK, *ss.*

The plaintiff above named in this suit comes into to court, and by Messrs. Alexander and Green, its attorneys, gives the court now here to be informed, and avers and alleges:

1st. That heretofore to wit, during all the times hereinafter mentioned, the plaintiff was a corporation duly organized, and existing under and by virtue of the laws of Great Britain, and still is such corporation, and at all such times it was and now is a citizen and subject of the Queen of Great Britain within the meaning of the construction and laws of the United States.

2d. That the defendant above named is and has been at all the times herein designated a corporation, created and existing under and by virtue of the laws of the State of New York, and now
7 is and has been at all times herein designated a citizen of the State of New York, within the meaning of the constitution and laws of the State of New York and of the United States.

3d. And the said plaintiff, by its said attorneys, complains of the said defendant in a plea of assumpsit upon implied promise for that whereas the said defendant on the 10th day of February, 1875, at the city of New York, in the southern district of New York aforesaid, was indebted to the said plaintiff in the sum of one million and ninety-three thousand dollars and upwards, lawful money of the United States of America, for certain commutation moneys from the plaintiff unlawfully demanded, exacted, and received at the city of New York by the said defendant under color of certain laws in the State of New York concerning passengers in vessels coming to the State of New York, and concerning the powers and duties of Commissioners of Emigration, and for the regulation of marine hospitals, and paid by the said plaintiff under the inducement of certain representations of the defendant, this plaintiff being an alien and not knowing the laws of the State of New York, and under protest at various times preceding the said 10th day
8 of February, 1875, and in various sums, and to and for the use of the plaintiff.

4th. And being so indebted, the said defendant, in consideration thereof, afterwards, to wit, on the same day and year last aforesaid, at the place aforesaid, undertook and then and there faithfully promised the said plaintiff well and truly to pay unto the said

plaintiff the said sum of money when the defendant should be thereunto afterwards requested.

Notwithstanding, said defendant, although afterwards requested so to do, has not paid said sums of money, or any or either of them or any part thereof, to the said plaintiff, but to pay the same, or any part thereof, to the said plaintiff has hitherto refused, and still does refuse, to the damage of the said plaintiff of the sum of one milion one hundred thousand dollars.

Therefore the plaintiff brings this suit, &c.

ALEXANDER & GREEN,
Plaintiff's Attornegs.

(Endorsed:) United States of America, Southern District of New York. The Liverpool, New York & Philadelphia Steamship Company against The Commissioners of Emigration. Declaration. Filed February 13, 1877.

9 Circuit Court of the United States for the Southern District of New York.

THE LIVERPOOL, NEW YORK AND PHILADELPHIA Steamship Company, Plaintiff,
against
THE COMMISSIONERS OF EMIGRATION, DEFENDANTS.

I hereby consent that Lewis Sanders, Esq., be substituted in my place and stead as the attorney for the above-named defendants, and that a rule be entered to that effect.

Dated New York, November 20th, 1878.

SIGISMUND KAUFMAN,
Defendants' Attorney.

(Endorsed:) Circuit Court of the United States for the Southern District of New York. The Liverpool, New York and Philadelphia Steamship Company, plff., vs. The Commissioners of Emigration, defts. Consent. S. Kaufman, defts' attorney, 39 Nassau st., N. Y. City. U. S. Circuit Court. Filed Nov. 21, 1878. John I. Davenport, Clerk.

10 The Circuit Court of the United States for the Southern District of New York.

THE LIVERPOOL, NEW YORK AND PHILADELPHIA Steamship Company,
against
THE COMMISSIONERS OF EMIGRATION.
October Term, 1878.

And the said Commissioners of Emigration, by Lewis Sanders, their attorney, comes and defends the wrong and injury, when, &c.,

and says that it did not undertake or promise in the manner and form as the said The Liverpool, New York and Philadelphia Steamship Company hath above thereof complained against it, and of this defendant puts itself upon the country.

And for a further plea, that as to all moneys alleged to have been paid prior to the 12th day of January, 1871, this defendant says that it did not at any time within six years next before the commencement of this suit undertake or promise in manner and form as the said plaintiff hath above thereof complained—and this the said defendant is willing to verify; wherefore it prays judgment, if the said plaintiff ought to have or maintain its aforesaid action thereof against this defendant, for so much of said moneys alleged to be paid before said date.

And for a further plea, the defendant says that the plaintiff, before and at the commencement of this action, to wit, at the city of New York, was and still is indebted to this defendant in a large sum of money, to wit, one million and ninety-three thousand dollars, lawful money of the United States, for so much money
11 by the defendant before that time paid, laid out and expended to and for the use of the said plaintiff, at its special instance and request, and being so indebted, the said plaintiff, in consideration thereof, afterwards, to wit, on the same day and year last aforesaid, at the same place aforesaid, undertook and then and there faithfully promised and agreed to and with the said defendant well and truly to pay unto the said defendant the said sum of money upon request; but, though often requested so to do, has hitherto wholly failed and refused and still doth neglect and refuse to pay said sum or any part or parcel thereof unto this defendant, which amount said defendant is willing and hereby offers to set off and allow to the said plaintiff the full amount of the said damages, and this the said defendant is ready to verify; wherefore it prays judgment if the said plaintiff ought to have or maintain its aforesaid action thereof against this defendant.

LEWIS SANDERS,
Defendant's Attorney.

To Messrs. ALEXANDER AND GREEN:

GENTLEMEN: The foregoing pleas at common law are tendered as a courtesy to your declaration. This form of pleading having been abolished by act of Congress, conforming the practice to that of the State, I herewith serve an answer as required by law, treating your declaration as a complaint.

New York, 1878.

Yours, &c.,

LEWIS SANDERS,
Defendant's Attorney.

12 The Circuit Court of the United States for the Southern District of New York.

THE LIVERPOOL, NEW YORK AND PHILADELPHIA Steamship Company, Plaintiff,
against
THE COMMISSIONERS OF EMIGRATION, DEFENDANT.

The Commissioners of Emigration, by Lewis Sanders, its attorney, answering the complaint called a declaration herein, allege that—

I. It has not sufficient knowledge or information to form a belief as to whether or not plaintiff ever was, or now is, a corporation or a citizen or subject of Great Britain within the meaning of the Constitution and laws of the United States, or otherwise.

II. Defendant admits its incorporation and existence as alleged.

III. Defendant denies each and every other allegation of fact in said complaint contained, except that it has not paid plaintiff the sum of one million and ninety thousand dollars and upwards, nor any part thereof.

IV. Defendant alleges that for all moneys alleged to have been paid by plaintiff prior to the 12th day of January, 1871, the cause of action therefor accrued to plaintiff more than six years prior to the commencement of this action, and that since said date defendant has not promised or undertaken to pay the same, or any part thereof, in any manner.

V. Upon information and belief defendant alleges that the plaintiff is not the real party in interest; that on or about the 10th day of February, 1875, plaintiff duly assigned and set over to the

13 Inman Steamship Company, limited, of Liverpool, England, all of its right, title, and interest in and claim to the moneys in suit, which last-named company is now prosecuting a suit in this court against this defendant for the recovery of the same moneys sought to be recovered in this action, in which said suit the Inman Steamship Company (limited) claim to be the assignees of the plaintiff herein of all said moneys.

VI. This defendant, for a further defence, alleges that in and about everything done by it in the premises complained of, it acted as the agent of the people of the State of New York, which fact was well known at all times to plaintiff and its agents, servants, and consignees, and that all moneys received by this defendant and expended by it was as such agent, and that there is a defect of parties in that in that the people of the State of New York are not made parties defendant.

VII. That by an act of Congress entitled "A bill to legalize the collection of head moneys already paid," approved June 19th, 1878, the acts of every state and municipal officer or corporation in the several states of the United States in collection of head moneys for every passenger brought to the United States prior to

the first day of January, 1877, under then existing laws of the several states, were declared valid, and the said acts were ratified, adopted, and confirmed by the United States; and it was further declared that no suits for the recovery of the moneys so paid should be maintained against any state or municipal officer or corporation.

That plaintiff, in prosecuting this action, is maintaining it for the recovery of head moneys paid prior to 1 January, 1877, pursuant to the then existing laws of the State of New York, for passengers, by the master, consignee, or owner of vessels bringing passengers to the United States from a foreign port, against this defendant as a state corporation of New York, against the
14 form of the statute aforesaid, which said statute this defendant pleads in bar of plaintiff's right to maintain this action and of the jurisdiction of this court to entertain the same.

VIII. For a further defence and by way of counter-claim, defendant alleges that by section four of chapter 523 of the laws of the State of New York, entitled "An act to amend chapter 483 of the laws of 1847, chapter 350 of the laws of 1849, chapter 275 of the laws of 1850, and chapter 339 of the laws of 1850, acts concerning passengers coming to the city of New York and the public health," passed July 11th, 1851, it is provided that all passengers brought from a foreign port in vessels to the port of New York, being aliens not having resided in the United States for twelve months prior thereto, who are lunatic, deaf, dumb, blind, married or infirm, or above the age of sixty years, or a widow with a child or children, or a woman without a husband and with a child or children, or unable to take care of himself or herself without becoming a public charge, or who from any attending circumstances are like to become a public charge, or who from sickness or disease existing at the time of the departure of the vessel from the foreign port are or are likely soon to become a public charge, shall be reported to the mayor of the city of New York; and in addition to the commutation money or bond before required for all alien passengers, the owner or consignee of such ship or vessel, with one or more sufficient sureties, shall execute a joint and several bond to the people of the state in a penalty of five hundred dollars for every such passenger, conditioned to save harmless the Commissioners of Emigration, and each and every city, town or country within the state from any further cost or charge for the maintenance or support of such passenger within five years from the
15 date of the bond. That plaintiff, in violation of said statute, by its vessels brought many passengers to the port of New York from foreign ports, who were lunatic, or deaf or dumb, or maimed, or infirm, or above the age of sixty, or widow with a child or children, or males or females, unable to take care of themselves without becoming a public charge or likely to become so, and who were aliens not having resided twelve months

in the United States, who were not reported to the mayor of New York, and for whom no bond was given as above required, and who became a public charge, and some of whom were housed, clothed, fed, nursed, buried or sent back to Europe by this defendant, and for the money so expended and for the said services rendered, care taken and attendance, and use of buildings and other property which were reasonably worth the sum of one million and ninety thousand dollars. This defendant demands judgment against the plaintiff, and that the complaint may be dismissed with costs.

LEWIS SANDERS,
Defendants' Attorney.

16 Service of the within pleas and answer admitted Dec. 24, 1878. ALEXANDER & GREEN.

(Endorsed:) The Circuit Court of the United States for the Southern District of New York. The Liverpool, New York and Philadelphia Steamship Company against The Commissioners of Emigration. Answer. Lewis Sanders, defendants' attorney, 39 Nassau st., N. Y.

17 U. S. Circuit Court, Southern District of New York.

THE LIVERPOOL, NEW YORK AND PHILADELPHIA Steamship Company, *against* THE COMMISSIONERS OF EMIGRATION.

The plaintiff, by this reply to the counter claim contained in the answer of the defendant, alleges:

That it has no knowledge or information sufficient to form a belief as to any of the allegations of said answer constituting a counter claim.

ALEXANDER & GREEN,
Plaintiffs' Attorneys.

(Endorsed:) Plaintiffs hereby stipulate to go to trial of the within action when reached, for trial as the condition of defendants receiving the within reply.

New York, January 11, 1881.

ALEXANDER & GREEN,
Pff's Att'ys.

Copy reply.
Ric'd Jan. 11, 1881.

18 At a stated term of the Circuit Court, of the United States of America, for the Southern District of New York, in the second circuit, held at the United States court rooms in the city of New York, on Tuesday, the 10th day of May, in the year of our Lord one thousand eight hundred and eighty-one.

Present, The Honorable Nathaniel Shipman, Judge.

THE LIVERPOOL, NEW YORK AND PHILADELPHIA Steamship Company,
vs.
THE COMMISSIONERS OF EMIGRATION.

On motion of Charles C. Demming, Esq., of counsel for the plaintiff, the above entitled action ordered trial.

Jurors sworn: Geo. S. Fitch, Jonathan O. Fowler, J. Munro Taylor, Thomas Cady, W. H. Gebhard, William Banks, Sam'l A. Goldsmith, Michael W. Davoning, James H. Giles, James J. Richards, Wm. P. Amy, John H. Drew.

Lewis Saunders, Esq., of counsel for the defendant, moves that the court either dismiss the complaint herein or direct the jury to find a verdict for the defendant, and is heard in support of said motion.

Mr. Demming is heard in opposition thereto.

The court directs the jury to find a verdict for the defendant.

The jury say that, by direction of the court, they find a
19 verdict for the defendant, and so say they all.

Prior to the rendering and recording of the verdict Mr. Demming excepts to the ruling of the court in directing the jury to find a verdict for the defendant.

(Endorsed:) C. C. of the U. S., S. D. of N. Y. Liverpool, N. Y. and Pa. Steamship Co. *vs.* The Comm'rs of Emigration. Certified transcript from minutes.

20 U. S. Circuit Court, Southern District of New York.

THE LIVERPOOL, NEW YORK AND PHILADELPHIA Steamship Company
agst.
THE COMMISSIONERS OF EMIGRATION.

The issues in the above action having been brought on for trial at the October term of the Circuit Court of the United States for the Southern District of New York, on the 10th day of May, 1881, before the Hon. Nathaniel Shipman and a jury, and a motion having been made by defendant to direct a verdict for the defendant, and said motion having been granted, and a verdict having been directed for defendant, and defendants' costs having been taxed at twenty-four $\frac{85}{100}$ dollars:

Now, on motion of Lewis Sanders, defendant's attorney, it is ordered, decreed, and adjudged that defendant, the Commissioners of Emigration, have judgment against the plaintiff, the Liverpool, New York and Philadelphia Steamship Company, and recover of plaintiff the sum of twenty-four $\frac{85}{100}$ dollars costs, and have execution therefor.

Judgment signed this 21st day of May, A. D. 1881.

JOHN A. SHIELDS, *Dp'ty Clerk.*

21 (Endorsed:) U. S. Circuit Ct. The Liverpool, New York and Philadelphia Steamship Company vs. Commissioners of Emigration. Judgment. 330. U. S. Circuit Court. Filed May 21, 1881. Joseph M. Denel, Clerk.

22 United States Circuit Court, Southern District of New York.

LIVERPOOL, NEW YORK AND PHILADELPHIA Steamship Company
against
THE COMMISSIONERS OF EMIGRATION.

SOUTHERN DISTRICT OF NEW YORK, *ss.*

Afterwards, to wit, at a Circuit Court held at the United States court house, in the city of New York, on the 6th day of May, 1881, before the Honorable Nathaniel Shipman, one of the judges appointed to hold the said circuit court according to the form of the statute in such case made and provided, the aforesaid issue so joined between the parties to this action as aforesaid came on to be tried by a jury for that purpose duly impannelled, at which day came there as well the said plaintiff as the said defendants, by their respective attorneys aforesaid, and the jurors on the jury aforesaid impannelled to try the said issue being called also, came and were then and there in due manner chosen and sworn to try said issue.

The counsel for the said plaintiff opened the cause to the jury.

23 The defendant's counsel moved to dismiss on the grounds that the court had no jurisdiction, and that an act of Congress entitled "A bill to legalize the collection of head moneys already paid, approved June 19th, 1878, was a bar to any recovery on any of the alleged causes of action set forth in the complaint.

Whereupon the court, being of opinion that said bill was a bar to any recovery on any of the alleged causes of action set forth in the complaint, upon that ground refused to hear evidence, and directed a verdict for the defendants, and that the defendants have judgment against the plaintiff with costs.

Whereupon the counsel for the plaintiffs in due time then and there duly excepted to the ruling, opinion, decision, and direction of the said judge upon the grounds—

First. That the said act of Congress did not constitute a bar to a recovery upon any of the plaintiff's alleged causes of action; and

Second. That the said act of Congress is unconstitutional and void, so far as it relates to the causes of action alleged in the complaint, and each of them. And because the said exception offered and made to the opinion, ruling, decision, and direction of the said judge does not appear upon the record of the said trial.

24 Therefore, on the prayer of the said plaintiff, by its counsel, the said judge hath to this bill of exceptions put his

seal, according to the law and practice of this court, this sixth day of May, in the year one thousand eight hundred and eighty-one.

N. SHIPMAN, *Judge.* [L. S.]

(Endorsed:) U. S. Circuit Court, Southern District of N. Y. Liverpool, New York and Philadelphia Steamship Company against The Commissioners of Emigration. Bill of exception. U. S. Circuit Court. Fled May 13, 1881. Joseph M. Deuel, clerk.

25 *Assignment of Errors.*

Supreme Court of the United States of October Term, in the year of our Lord one thousand eight hundred and eighty-one.

THE LIVERPOOL, NEW YORK AND PHILADELPHIA Steamship Company, Plaintiff in Error,
against
THE COMMISSIONERS OF EMIGRATION, Defendants in Error.

Afterwards, to wit, at the said October term, before the Justices of the Supreme Court, at the Capitol in the city of Washington, came the said The Liverpool, New York and Philadelphia Steamship Company, by Alexander & Green, Esquires, their attorneys, and say that in the record and proceedings aforesaid there is error in the several rulings of the court to which exception has been taken, and that by the record aforesaid, it appears that the judgment aforesaid in form aforesaid given was given for the said defendant against the said plaintiff, whereas by law of the land the said judgment ought to have been given for the said plaintiff in error. And the said plaintiff prays that the judgment aforesaid, for the errors aforesaid, and other errors in the record and proceedings aforesaid, as the same appear more fully therein, may be reversed, annulled, and altogether held for nothing, and that it, the plaintiff, may be restored to those things which it has lost by reason of said judgment.

26

ALEXANDER & GREEN,
Attorneys for Plaintiff in Error.

27 (Endorsed:) U. S. Supreme Court. The Liverpool, New York and Philadelphia Steamship Company vs. The Commissioners of Emigration. Assignment of errors. Alexander & Green, attorneys for pl'ff in error, 120 Broadway, New York City. Service of a copy of the within assignment of errors is hereby admitted this 10th day of June, 1881. Lewis Sanders, attorney for def't in error. U. S. Circuit Court. Filed June 11th, 1881. Joseph M. Deuel, clerk.

28 Supreme Court of the United States.

THE LIVERPOOL, NEW YORK AND PHILADELPHIA Steamship Company, Plaintiff in Error,
vs.
THE COMMISSIONERS OF EMIGRATION OF THE CITY of New York, Defendants.

And afterwards, to wit, on the second Monday of October, in October term, in the year of our Lord one thousand eight hundred and eighty-one, the said Commissioners of Emigration of the city of New York, by their attorney, freely came here into court and say, that there is no error, either in the record and proceedings aforesaid, or in the giving of the judgment aforesaid; and they pray that the said supreme court of judicature, before the
29 justices thereof now here, may proceed to examine as well the record and proceedings aforesaid as the matter aforesaid above assigned for error, and that the judgment aforesaid, in form aforesaid given, may be in all things affirmed, &c.

LEWIS SANDERS,
Attorney for Defendant in Error.

(Endorsed:) Supreme Court of the United States. The Liverpool, New York and Philadelphia Steamship Company, plaintiff, *vs.* The Commissioners of Emigration of the City of New York, defendants. Joinder in error. Lewis Sanders, atty. for deft., 39 Nassau st., N. Y. City. U. S. Circuit Court. Filed June 11, 1881. Joseph M. Deuel, clerk.

30 United States Circuit Court, Southern District of New York.

LIVERPOOL, NEW YORK AND PHILADELPHIA Steamship Company.
against
THE COMMISSIONERS OF EMIGRATION.

Bond for Damages and Costs.

Know all men by these presents that we, John G. Dale and Robert Floyd, both of the city, county, and State of New York, are held and firmly bound unto the above-named The Commissioners of Emigration in the sum of five hundred dollars, to be paid to the said The Commissioners of Emigration, for the payment of which well and truly to be made we bind ourselves and each of us, our and each of our heirs, executors, and administrators, jointly and severally, firmly by these presents. Sealed with our
31 seals, and dated the seventh day of June, in the year of our Lord one thousand eight hundred and eighty-one.

Whereas the above-named Liverpool, New York and Philadelphia Steamship Company has presented a writ of error issuing

out the Supreme Court of the United States to reverse the judgment rendered in the above-entitled suit by the Circuit Court of the United States for the Southern District of New York, at the May term of the court, 1881:

Now, therefore, the condition of this obligation is such, that if the above-named plaintiff in error shall prosecute the said writ of error to effect and answer all damages and costs if it should fail to make said writ of error good, then this obligation shall be void, otherwise the same shall be and remain in full force and virtue.

JOHN G. DALE. [L. S.]
ROBT. FLOYD. [L. S.]

32 Sealed and delivered and taken and acknowledged this seventh day of June, 1881, before me.

[L. S.] JAS. G. JANEWAY,
Notary Public, No. 42, N. Y. County.

UNITED STATES OF AMERICA,
SOUTHERN DISTRICT OF NEW YORK, } *ss.*

John G. Dale and Robert Floyd, being duly sworn, do depose and say, and each for himself says, that he is worth the sum of one thousand dollars over and above all his just debts and liabilities.

Sworn to this seventh day of June, A. D. 1881, before me.

[L. S.] JAS. G. JANEWAY,
Notary Public, No. 42, N. Y. County.

The foregoing bond is approved. June 8th, 1881.

SAM'L BLATCHFORD,
Circuit Judge.

33 (Endorsed:) U. S. Circuit Court, Southern District of New York. Liverpool, New York and Philadelphia Steamship Company against The Commissioners of Emigration. Bond for damages and costs. U. S. Circuit Court. Filed June 8th, 1881. Joseph M. Deuel, clerk.

34 The United States of America to the Commissioners of Emigration of the city of New York, greeting:

You are hereby cited and admonished to be and appear at the Supreme Court of the United States to be holden at Washington on the second Monday of October, 1881, pursuant to a writ of error filed in the clerk's office of the Circuit Court of the United States for the Southern District of New York, wherein the Liverpool, New York and Philadelphia Steamship Company is plaintiff in error and you are defendants in error, to show cause, if any there